

COMPLIMENTS OF

J. E. M. BOWEN,

EXAMINER OF TRADE-MARKS.

UNITED STATES TRADE-MARK STATUTES,

AND

RULES OF PRACTICE IN TRADE-MARK CASES

IN THE

UNITED STATES PATENT OFFICE.

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UNITED STATES TRADE-MARK STATUTES.

TRADE-MARK.

TITLE LX, Rev. Stat., Chap. 2, p. 963 :

SEC. 4937. Any person or firm domiciled in the United States and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements:

Registration of
trade-marks au-
thorized.

8 July, 1870, c.
230, s. 77, v. 16, p.
210.

First. By causing to be recorded in the Patent Office a statement specifying the names of the parties, and their residences and place of business, who desire the protection of the trade-mark; the class of merchandise, and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated; a description of the trade-mark itself, with fac-similes thereof, showing the mode in which it has been or is intended to be applied and used; and the length of time, if any, during which the trade-mark has been in use.

Second. By making payment of a fee of twenty-five dollars in the same manner and for the same purpose as the fee required for patents.

Third. By complying with such regulations as may be prescribed by the Commissioner of Patents.

SEC. 4938. The certificate prescribed by the preceding section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by some member of the firm or officer of the corporation by whom it is filed, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might

Accompanying
declaration un-
der oath.

Ibid., s. 77, p.
210.

be calculated to deceive; and that the description and facsimiles presented for record are true copies of the trade-mark sought to be protected.

Restriction on
the registration
of trade-marks.

8 July, 1870, c.
230, s. 79, p. 211.

SEC. 4939. The Commissioner of Patents shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise, and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public. But this section shall not prevent the registry of any lawful trade-mark rightfully in use on the eighth day of July, eighteen hundred and seventy.

Time of receipt of trade-mark for registration to be certified.

Ibid., s. 80.

SEC. 4940. The time of the receipt of any trade-mark at the Patent Office for registration shall be noted and recorded. Copies of the trade-mark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the Patent Office, certified by the Commissioner, shall be evidence in any suit in which such trade mark shall be brought in controversy.

Duration of protection of registered trade-mark, and renewal.

Ibid., s. 78, p. 211.

SEC. 4941. A trade-mark registered as above prescribed shall remain in force for thirty years from the date of such registration; except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere. Such trade-mark during the period that it remains in force shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade-mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods. And at any time during the six months prior to the expiration of the term of thirty years application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents. The fee for such renewal shall be the same as for the original registration; and a certificate of such renewal shall be issued in the same

manner as for the original registration ; and such trade-mark shall remain in force for a further term of thirty years.

SEC. 4942. Any person who shall reproduce, counterfeit, copy, or imitate any recorded trade-mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action on the case for damages for such wrongful use of such trade-mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

Remedy for infringement of registered trade-marks.

8 July, 1870, c. 230, s. 79, v. 16, p. 211.

SEC. 4943. No action shall be maintained under the provisions of this chapter by any person claiming the exclusive right to any trade-mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade-mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

Restriction upon actions for infringement.

Ibid., s. 84, p. 212.

SEC. 4944. Any person who shall procure the registry of any trade mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark in the Patent-Office, by making any false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such registry or entry to the person injured thereby; to be recovered in an action on the case.

Penalty for false registration of trade-marks.

Ibid., s. 82.

SEC. 4945. Nothing in this chapter shall prevent, lessen, impeach, or avoid any remedy, at law or in equity, which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this chapter had not been enacted.

Former rights and remedies preserved.

Ibid., s. 83.

SEC. 4946. Nothing in this chapter shall be construed by any court as abridging or in any matter affecting unfavorably the claim of any person to any trade-mark after the expiration of the term for which such trade-mark was registered.

Saving as to rights after expiration of term for which a trade-mark has been registered.

Ibid., s. 78.

SEC. 4947. The Commissioner of Patents is authorized to make rules, regulations, and prescribe forms for the transfer of the right to the use of trade-marks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

Regulations for transfer of rights to trade-marks.

Ibid., s. 81.

AN ACT TO PUNISH THE COUNTERFEITING OF TRADE-MARK
GOODS AND THE SALE OR DEALING IN OF COUNTERFEIT
TRADE-MARK GOODS; Approved August 14th, 1876.

Penalty for
selling or offering
for sale goods
bearing a fraudu-
lent trade-mark.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person who shall with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trade-mark, pursuant to the statutes of the United States, to which, or to the package in which the same are put up, is fraudulently affixed said trade-mark, or any colorable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

Penalty for af-
fixing fraudulent
trade-mark.

SEC. 2. That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trade-mark registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, to any goods, of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods, referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

Penalty for put-
ting up packages
bearing fraudu-
lent trade-mark.

SEC. 3. That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trade-mark, registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

Manufacturing
fraudulent trade-
mark.

SEC. 4. That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colorable imitation of any die, plate, brand, engraving, or mould of any private label, brand, stamp, wrapper, engraving on paper or

other substance, or trade-mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 5. That any person or persons who shall, with intent to defraud any person or persons, knowingly and will- Dealing in fraudulent trade-mark. fully make, forge, or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colorable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trade-mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 6. That any person who shall, with intent to injure or defraud the owner of any trade-mark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in or have in his possession any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trade-mark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this act. Possession of empty box or package having registered trade-mark with intent to defraud.

SEC. 7. That if the owner of any trade-mark, registered pursuant to the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, or moulds of his said registered trade-mark, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, or makes such oaths that any counterfeits or colorable imitations of his said trade-mark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trade-mark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, then the several judges of the circuit and district courts of the United States and the Commissioners of the circuit courts may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorizing and directing the marshal of the United States for the proper district to search for and seize all said counterfeit dies, plates, brands, engrav- Proceedings to detect fraudulent trade-mark. Jurisdiction of United States courts.

ings on wood, stone, metal, or other substance, moulds, and said counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other substance, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purposes of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

Penalty for
abetting viola-
tion of preceding
sections.

SEC. 8. That any person who shall, with intent to defraud any person or persons, knowingly and willfully aid or abet in the violation of any of the provisions of this act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or imprisonment not more than one year, or both such fine and imprisonment.

UNITED STATES PATENT OFFICE.—RULES IN TRADE-MARK CASES.

TRADE-MARKS.

84. Any person or firm domiciled in the United States, ^{Trade-marks,} and any corporation created by the authority of the United ^{how to secure} States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements, to wit:

First. By causing to be recorded in the Patent Office the ^{Proceeding} names of the parties, and their residences and place of business, who desire the protection of the trade-mark. ^{necessary.}

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trade-mark had been or is intended to be appropriated.

Third. A description of the trade-mark itself, with fac-similes thereof, and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trade-mark has been used.

Fifth. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the Commissioner of Patents.

Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has a right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected. The oath must also state the citizenship of the person desiring registration.

The petition asking for registration should be accompanied with a distinct statement or specification, setting forth the

domicile and residence of the applicant, the length of time the trade-mark has been used, the mode in which it is intended to apply it, and the particular description of goods comprised in the class by which it has been appropriated, and giving a full description of the design proposed, particularly distinguishing between the essential and the non-essential features thereof.

How long the right may inure.

85. The protection for such trade-mark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trade-mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have force in this country, by virtue of the registration, at the same time that it becomes of no effect elsewhere.

Proper subjects for trade-marks.

86. No proposed trade-mark will be received or recorded which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public; but any lawful trade-mark rightfully used at the time of the passage of the act relating to trade-marks (July 8, 1870) may be registered.

Proceedings in the Office.

All applications for registration are considered in the first instance by the Trade-mark Examiner. From adverse decision by such Examiner upon the applicant's right to registration, an appeal directly to the Commissioner will lie, no fee being charged therefor.

In case of conflicting applications for registration, the Office reserves the right to declare an interference, in order that the parties may have opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents.

Fac-similes to be filed.

87. Where the trade-mark can be represented by a fac-simile which conforms to the rules for drawings of mechanical patents, such a drawing may be furnished by applicant, and the additional copies will be produced by the photo-lithographic process, at the expense of the Office. Or the applicant may furnish one fac-simile of the trade-mark, mounted on a card ten by fifteen inches in size, and ten additional cop-

ies, upon flexible paper, not mounted, as in designs, but in all cases the mounted fac-simile or the drawing must be signed by the applicant or his authorized attorney, and the signature must be attested by two witnesses.

88. The right to the use of any trade-mark is assignable ^{Trade-marks assignable.} by any instrument of writing, and such assignment must be recorded in the Patent Office within sixty days after its execution, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. The fees will be the same as are prescribed for recording assignments of patents.

OFFICIAL FORMS.

Petition.

11.—FOR THE REGISTRATION OF A TRADE-MARK.

To the Commissioner of Patents :

Your petitioner [or petitioners, if a firm] respectfully represents that he [or it, if a corporation] is engaged in the manufacture of ———, at ———, and at ———, ———, and that he is entitled to the exclusive use upon the class of goods which he manufactures of the trade-mark described in the annexed statement or specification, and illustrated in the accompanying fac-simile.

He therefore prays that he may be permitted to obtain protection for such lawful trade-mark under the law in such cases made and provided.

A. B.

Specification.

20.—FOR A TRADE-MARK.

[If the application is made by a corporation or a firm this form should be modified to conform to the facts.]

To all whom it may concern :

Be it known that I, [here insert the name of the applicant,] domiciled in [the United States, or in the Dominion of Canada, or, as the case may be,] and residing at ———, and doing business at ———, in the county of ———, and State of ———, have adopted [or intend to adopt] for my use a trade-mark for ———, of which the following specification is a full, clear, and exact description :

My trade-mark consists of the letters and words, S. N. & Co.'s Buck-eye Sheetings. These generally have been arranged as shown in the accompanying fac-simile; above and below a figure of a man represented

as ascending the side of a mountain and carrying a banner, upon which is inscribed the word "Buckeye;" and the whole has been inclosed within an ornamental border substantially like that shown in the fac-simile. But the figure of the man with the banner may be omitted, or some other device substituted for it, and the border may be changed at pleasure or omitted altogether without materially changing the character of my trade-mark, the essential features of which are the letters S. N. & Co.'s and the word-symbol Buckeye.

This trade-mark I have used in my business for ten years last past.

The class of merchandise to which the trade-mark is appropriated is ———; and the particular description of goods [comprised in said class] upon which I use my said trade-mark are ———. I have been accustomed to print it in blue ink upon each piece of said goods, and also to have it printed on labels, which I afterward paste upon said articles or on boxes and cases containing the same.

A. B.

Witnesses: C. D.

F. H.

30.—DECLARATION OF APPLICANT FOR REGISTRATION OF A TRADE-MARK.

[If the application is made by a corporation, or a firm, this form should be modified to conform to the facts.]

STATE OF ———, County of ———, ss:

A. B., being duly sworn, deposes and says that he is the applicant named in the accompanying petition; that he verily believes that the facts set forth in the foregoing specification are true; that he has a right to the use of the trade-mark described in said specification; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected, and that he is a citizen of the United States, (or, a citizen of the Republic of France, or, as the case may be.)

A. B.

Sworn to and subscribed before me this 15th day of ———, 187—.

E. F.,

Justice of the Peace.

REGISTRATION OF PRINTS AND LABELS.

By an act of Congress entitled, "An act to amend the law relating to patents, trade-marks, and copyrights," approved June 18, 1874, (to take effect on and after the 1st day of August, 1874,) it is provided in the

3d section thereof, that certain prints and labels may be registered in this Office :

SEC. 3. That in the construction of this act, the words "Engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

By the word "print," as used in the said act, is meant any device, picture, word or words, figure or figures, (not a trade-mark,) impressed or stamped directly upon the articles of manufacture, to denote the name of the manufacturer or place of manufacture, style of goods, or other matter.

By the word "label," as therein used, is meant a slip or piece of paper, or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, and packages containing them, and bearing an inscription, (not a trade-mark,) as, for example: the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, &c.

By the words "articles of manufacture"—to which such print or label is applicable by said act—is meant all vendible commodities produced by hand, machinery, or art.

But no such print or label can be registered unless it properly belongs to an article of commerce, and be as above defined; nor can the same be registered as such print or label when it amounts to a lawful trade-mark.

To entitle the owner of any such print or label to register the same in this Office, it is necessary that five copies of the same be filed, one of which copies shall be certified under the seal of the Commissioner of Patents, and returned to the registrant.

The certificate of such registration will continue in force for twenty-eight years.

The fee for registration of a print or label is six dollars, to be paid in the same manner as fees for patents.

The benefits of this act seem to be confined to citizens, or residents, of the United States.

FORM OF APPLICATION FOR REGISTRATION OF PRINTS AND LABELS.

[Making necessary changes to suit each case.]

[FOR AN INDIVIDUAL.]

To the Commissioner of Patents:

The undersigned, A. B., of the city of Brooklyn, county of Kings, and State of New York, and a citizen of the United States, [or resident therein, as the case may be,] hereby furnishes five copies of a label, [or print, *as the case may be,*] to be used for ———, of which he is the sole proprietor.

The said label [or “print”] consists of the words and figures, as follows, to wit: ——— [Description.]

And he hereby requests that the said print [or label] be registered in the Patent Office, in accordance with the act of Congress to that effect, approved June 18, 1874.

_____,
Proprietor.

BROOKLYN, N. Y., August 1, 1874.

[FOR A CORPORATION.]

To the Commissioner of Patents:

The applicant, a corporation created by authority of the laws of the State of New York, [or other authority, as the case may be,] and doing business at ———, in said State, hereby furnishes five copies of a label, [or “print,” *as the case may be,*] to be used for ———, of which it is the sole proprietor.

The said label consists of the words and figures as follows, to wit: ——— [Description.]

And it is hereby requested that the said label [or print] be registered in the Patent Office, in accordance with the act of Congress to that effect, approved June 18, 1874.

[L. S.] Witness the seal of said corporation at ———, ———, 1874.

_____,
President, [or other officer.]

NOTE.

The registration of copyright matter is, by law, under the control of the Librarian of Congress at Washington. At the time of the enactment of the trade-mark law of July 8, 1870, it was the custom of the Librarian of Congress to enter, under the provisions of the copyright law, labels and prints of commerce, many of which embraced legal trade-marks. Notwithstanding the existence of a separate statute in 1870 for the registration of trade-marks, the Librarian of Congress, in entering labels and prints of commerce, gave a semblance of protection to many trade-marks, of which the labels and prints entered by him were the mere vehicles. To remedy this difficulty was the object of the

amendment to the copyright law of June 18, 1874, referred to herein as the act for the registration of prints and labels. By this amendatory act the Librarian of Congress is restricted, in the registry of copyright matter, to pictorial illustrations or works connected with the fine arts, and is prohibited from registering labels or prints designed to be used for any other articles of manufacture, *i. e.*, articles of commerce. These are now registrable at the Patent Office; while matter properly coming within the definition of copyright subject-matter, as contained in the act of June 18, 1874, is registrable at the office of the Librarian of Congress.

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